

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF NEW MEXICO**

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ALICEA N. GIGANTE,

Plaintiff,

v.

1:22-cv-00168-KWR-GJF

KILOLO KIJAKAZI, Acting Commissioner  
of the Social Security Administration,

Defendant.

**ORDER ADOPTING MAGISTRATE JUDGE’S PROPOSED FINDINGS AND  
RECOMMENDED DISPOSITION ON PLAINTIFF’S MOTION TO REMAND**

**THIS MATTER** is before the Court upon the Magistrate Judge’s “Proposed Findings and Recommended Disposition on Plaintiff’s Motion to Remand” (**Doc. 30**) (“PFRD”), which was filed on July 25, 2023. The PFRD concluded that “the Administrative Law Judge (ALJ) (1) did not err in discounting the opinion of a consulting psychological examiner and (2) supported her findings with substantial evidence.” **Doc. 30 at 1, 8–10**. Consequently, the PFRD recommended that “the Commissioner’s decision be affirmed, Plaintiff’s Motion [Doc. 26] be denied, and this case be dismissed with prejudice.” **Id. at 10**. The PFRD also notified the parties of their ability to file objections within fourteen days and warned them that the failure to file objections would waive appellate review. **Id.** The fourteen-day deadline has now expired without either party filing objections.

The Tenth Circuit has held that “a party’s objections to the magistrate judge’s report and recommendation must be both timely and specific to preserve an issue for de novo review by the district court or for appellate review.” *United States v. One Parcel of Real Property*, 73 F.3d 1057, 1060 (10th Cir. 1996). The parties’ failure to timely object to the Magistrate Judge’s PFRD waives

appellate review of both factual and legal questions. *In re Key Energy Res. Inc.*, 230 F.3d 1197, 1199–1200 (10th Cir. 2000); *One Parcel of Real Property*, 73 F.3d at 1059. Furthermore, having reviewed the record and the briefing on Plaintiff’s Motion to Remand, the Court concurs with the findings, analysis, and conclusions in the PFRD.

**IT IS THEREFORE ORDERED** that the PFRD (**Doc. 30**) is **ADOPTED**; the Commissioner’s decision is **AFFIRMED**; Plaintiff’s Motion (**Doc. 26**) is **DENIED**; and this case is **DISMISSED WITH PREJUDICE**.

**IT IS SO ORDERED.**

  
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KEA W. RIGGS  
UNITED STATES DISTRICT JUDGE